Child custody

Child custody is a legal term regarding *guardianship* which is used to describe the legal and practical relationship between a parent or guardian and a child in that person's care. Child custody consists of *legal custody*, which is the right to make decisions about the child, and *physical custody*, which is the right and duty to house, provide and care for the child.[1] Married parents normally have joint legal and physical custody of their children. Decisions about child custody typically arise in proceedings involving divorce, annulment, separation, adoption or parental death. In most jurisdictions child custody is determined in accordance with the best interests of the child standard.[2]

Following ratification of the United Nations Convention on the Rights of the Child in most countries, terms such as parental responsibility, "residence" and "contact" (also known as "visitation", "conservatorship" or "parenting time" in the United States) have superseded the concepts of "custody" and "access" in some member nations. Instead of a parent having "custody" of or "access" to a child, a child is now said to "reside" or have "contact" with a parent.[3]

Contents

Legal custody

Physical custody
- Forms
- Joint physical custody
- Sole custody

Prevalence

Jurisdiction

The "best interest" rule
- Problems with the "best interest" rule

Economics

Gender issues

Australia

United States
- The colonial era and early republic: 1630-1830
- The nineteenth century
- The early twentieth century
- The late twentieth and early twenty-first centuries

See also

References

Legal custody

Legal custody involves the division of rights between the parents to make important life decisions relating to their minor children.[4] Such decisions may include choice of a child's school, physician, medical treatments, orthodontic treatment, counseling, psychotherapy and religion.[5]

Legal custody may be joint, in which case both parents share decision-making rights, or sole, in which case one parent has the rights to make key decisions without regard to the wishes of the other parent.[4]

Physical custody

Physical custody establishes where a child lives and who decides day-to-day issues regarding the child. If a parent has physical custody of a child, that parent's home will normally be the child's legal residence (domicile). The times during which parents provide lodging and care for the child is defined by a court-ordered custody *parenting schedule*, also known as a *parenting plan*.

Forms

The different forms of physical custody include:

- **Sole custody**, an arrangement whereby only one parent has physical custody of the child. The other non-custodial parent would typically have regular visitation rights.[6]
- **Joint physical custody**, a shared parenting arrangement where both parents have the child for approximately equal amounts of time, and where both are custodial parents.[6]
- **Bird's nest custody**, a type of *joint physical custody* whereby the parents go back and forth from a residence in which the child always reside, placing the burden of upheaval and movement on the parents rather than the child.[7]
- **Split custody**, an arrangement whereby one parent has sole custody over some children, and the other parent has sole custody over the remaining children.[8]
- **Alternating custody**, an arrangement whereby the child lives for an extended period of time with one parent and an alternate amount of time with the other parent. This type of arrangement is also referred to as Divided custody.[9]
- **Third-party custody**, an arrangement whereby the children do not remain with either biological parent, and are placed under the custody of a third person.

Joint physical custody

Joint physical custody, or *shared parenting*, means that the child lives with both parents for equal or approximately equal amounts of time. In joint custody, both parents are *custodial parents* and neither parent is a non-custodial parent.[10] With joint physical custody, terms such as "primary custodial parent" and "primary residence" have no legal meaning other than for determining tax status.[11] The term "visitation" is not used in joint physical custody cases, but only for sole custody orders. In joint physical custody, the actual lodging and care of the child is shared according to a court-ordered custody schedule, also known as a *parenting plan* or *parenting schedule*.[12]

Sole custody

Sole physical custody means that a child resides with only one parent, while the other parent may have visitation rights with his/her child. The former parent is the *custodial parent* while the latter is the *non-custodial parent*.[10][13][14][15]

Prevalence

Comparing 36 western countries in 2005/06, Thoroddur Bjarnason studied the proportion of 11-15 year old children living in different child custody arrangements. The percent of children living in intact families with both their mother and father were highest in Macedonia (93%), Turkey (89%), Croatia (89%) and Italy (89%), while it was lowest in the United States (60%), Romania (60%), Estonia (66%) and Latvia (67%). In the other anglophone countries, it was 70% in the United Kingdom, 71% in Canada and 82% in Ireland. Among the children who did not live with both their parents, the percent in a shared parenting versus sole custody arrangement was highest in Sweden (17%), Iceland (11%), Belgium (11%), Denmark (10%), Italy (9%) and Norway

(9%). At 2% or less, it was lowest in Ukraine, Poland, Croatia, Turkey, the Netherlands and Romania. It was 5% in Ireland and the United States and 7% in Canada and the United Kingdom.[16] Shared parenting is increasing in popularity, and by 2016/17, the percentage in Sweden had increased to 34% among the 6-12 year old age group and 23% among 13-18 year old children.[17]

Jurisdiction

A child custody case must be filed in a court that has jurisdiction over the child custody disputes. Jurisdiction normally arises from the presence of the children as legal residents of the nation or state where a custody case is filed.[18] However, some nations may recognize jurisdiction based upon a child's citizenship even though the child resides in another country, or may allow a court to take jurisdiction over a child custody case either on a temporary or permanent basis based upon other factors.[19]

Forum shopping may occur both between nations and, where laws and practices differ between areas, within a nation. If a plaintiff files a legal jurisdiction that the plaintiff believes to have more favorable laws than other possible jurisdictions, that plaintiff may be accused of forum shopping.

The Hague Convention seeks to avoid this,[20] also in the United States of America, the Uniform Child Custody Jurisdiction and Enforcement Act was adopted by all 50 states, family law courts were forced to defer jurisdiction to the home state.[21]

The "best interest" rule

In the context of cases regarding custody, the "best interest" rule suggests that all legal decisions made to accommodate the child are made with the goal of ensuring a child's happiness, security and overall well being. There are many different factors that go into the decision that is made in a child's best interest, which include: the child's health, environment and social interests,[2] the relationship each parent has with the child, and the ability of each parent to address the needs of the child.

Problems with the "best interest" rule

The “best interest” rule has been considered to be a standard in determining child custody for the most recent 40 years in history. Although it has been so widely favored amongst legal systems, there are some deficiencies to the concept. Robert Mnookin, an American lawyer, author, and a Professor of Law at Harvard Law School, claimed that the best interest rule is indeterminate. It is considered to be a broad and vague set of guidelines that only leads to increased conflict amongst the parents instead of promoting cooperation that would actually lead to the best interest of the child being met.[22] Some of these problems specifically include:

- The current test for best interest generates high costs, which can impose on both the court and opposing parties.[22]
- The verifiability of the best interest standard is hard to achieve. The privacy of family life makes assessing the evidence provided difficult. The best interests standard only worsens the problem, in which both parties are encouraged to introduce evidence of the quality of their parenting (which also promotes trying to disprove the opposing party’s capabilities of taking the child into custody).[22]
- In an example of divorce, both parties are experiencing high levels of stress, which could make for a poor basis for assessing family behaviors and relationships.[22]

In order to better analyze the “best interest” of children, several experiments were conducted to observe the opinions of children themselves. Children of divorce were found to want equal time with both of their parents. Studies conducted by Wallerstein, Lewis and Blakeslee (2002) show that children from all age ranges indicate that equal or shared parenting is of their best interest 93 percent of the time.[23] Several other studies were able to produce similar results, including Smart (2002), Fabricus and Hall (2003), Parkinson, and Cashmore and Single (2003).[24] As a result, there has been a push to allow for joint custody of children in the most recent years, which strives to best meet the interests of the children and most evidently favors a gender neutral stance on

the custody issue. However, the decision is highly situational, for joint custody can only be achieved in the absence of certain exceptions. For example, history of domestic violence found from either parent can most certainly trump the possibility of joint custody for a child.[22]

Economics

In an economic analysis, Imran Rasul has concluded that if one parent values child quality more than the other, the spouses prefer that parent to have sole custody, while joint custody is optimal for parents with relatively equal valuation of child quality. He has further concluded that "joint custody is more likely to be optimal when divorce costs fall, so that children retain contact with both parents" and that "this may improve child welfare".[25]

Gender issues

As the roles of children have changed over the past couple of centuries from economic assets to individuals, so has the role of mothers and fathers in who would provide the best care for the child. Many courts and judges lean more towards the maternal figure when there is a trial for custody of a child. According to Family Change and Time Allocation in American Families study done at UCLA, women allocate about 13.9 hours a week to child care while men allocate about 7 hours a week.[26] Additionally, according to the Current Population Survey, in 2013, custodial mothers were more likely to have child support agreements (52.3 percent) comparative to custodial fathers (31.4 percent).[27]

Women's and father's rights activists often become involved in matters of child custody since the issue of equal parenting is controversial, most of the time combining the interests of the child with those of the mothers or fathers. Women's rights activists are concerned about "family violence, recognizing primary caregiving, and inequities associated with awarding legal joint custody without a corresponding responsibility for child care involvement".[28] Father's rights activists are more concerned about their "disenfranchisement from children's lives, the importance of parent-child attachment, combating parental alienation, and access enforcement".[28] Courts cannot determine an individual child's best interests with certainty, and judges are "forced to rely on their own interpretations of children's interests, and idiosyncratic biases and subjective value-based judgments, including gender bias".[28] Judges are currently using the 'best interest of the child' standard that was made to consider the interests of the child before the mothers and fathers, including the child's mental, emotional, physical, religious, and social needs.[29]

Child poverty, lack of resources, and women's economic dependence on men all remain pressing issues that are not effectively noted during the custody trials.[28]

Australia

Each parent has a responsibility under the Australian *Family Law Act 1975* for their child/ren. The parental responsibility does not change in cases of separation or dysfunction between the two parents.

In the case of divorce or separation of parents many hurdles can fall in the way regarding the custody of their children, deciding who will be the custodial parent and so forth. In Australia when parents cannot come to an agreement which meets both of their needs when it comes to the custody of their child/ren cases are taken to the Family Court of Australia, which happens in more scenarios than expected. When parents cannot agree on these arrangements and take matters to court, the court makes orders about parental responsibilities, and have the power to approve and make consent orders.[30]

United States

Looking at the history of child custody demonstrates how the views of children and the relationship between husbands and wives have changed over time. The view of children has changed from economic assets to individuals with their own interests. Fathers were also once seen as the head of the household compared to today, when fathers and mothers have more equal standing in the

care of their children.[31]

The colonial era and early republic: 1630-1830

During this time period, custodial issues arose with occasions other than divorce such as the death of the father or both parents, inability of parents to care for the children, or with situations involving illegitimate children. Children at the time were seen as economic assets with labor value. In addition to this, the only other important consideration in determining custody was the ability of the adults to supervise and raise the child. Widows would lose their children because they would not be able to support them. These children would be taken from the mother and given to another family that would support the child in return for the child's labor services. Otherwise, fathers were seen as the head of the household and had complete custody rights to children.[32]

The nineteenth century

The view of children as servants to their fathers and economic assets began to change in the nineteenth century. Children were seen to have interests of their own that were often associated with the care of a nurturing mother. The women's movement of the time also fought for women's right to child custody in their campaign.[32] Judges eventually began to favor the "best interests of the child," which, especially for young and female children, was associated with mothers. Maternal presumption was judicially developed through legislature such as the "Tender Years Doctrine" that presumed that children should be placed with their mothers in custody debates.[33] Granting custody to the father was seen "to hold nature in contempt, and snatch helpless, puling infancy from the bosom of an affectionate mother, and place it in the coarse hands of the father" when the mother was "the softest and safest nurse of infancy".[34] This maternal presumption continued for over a hundred years. The only exception to maternal presumption was if the mother was considered to be "unfit." Most often, this occurred when women had committed adultery or left their husband.[32]

The early twentieth century

By the early twentieth century, divorce cases became more common, and custody disputed simultaneously became an issue that affected many families. With the changing attitudes of the Roaring 20's, a woman's sexual conduct no longer prevented her from receiving custody for her children. The double standard on sexual conduct of fathers and mothers was removed. The new rule according to Keezer on the Law of Marriage and Divorce stated that "Where the children are of tender years, other things being equal, the mother is preferred as their custodian, and this more especially in the case of female children, and this though she may have been guilty of delinquencies in the past but there is no evidence that she was delinquent at the time of determining the matter by the court."[32]

The late twentieth and early twenty-first centuries

In the late twentieth and early twenty-first centuries, divorce rates increased dramatically. Due to the nature of divorce, the rules governing child custody became increasingly difficult to determine. It was at this time that the idea of mothers being favored to gain custody of children in the event of a divorce was challenged. "The simple fact of being a mother does not, by itself, indicate a capacity or willingness to render a quality of care different from that which the father can provide", a New York court stated in 1973.[32] It was at this time that the basis of the "best interest rule" was changed to address many aspects of the child's care in order to promote gender neutrality in decisions regarding custody. These aspects include, but are not limited to, the child's mental, emotional, physical, religious, and social needs. All children have the right to services that prevent them from physical or psychological harm. This means that when assessing the best interest of the child, it is not only important to assess the parents who are fighting for custody, but also the environments in which the child would be placed under the custody of either parent. In a situation where neither parent would be deemed an appropriate caretaker for a child, custody would be given to a foster care center.[35]

In some states joint physical custody creates a presumption of equal shared parenting, however in most states, joint physical custody creates an obligation to provide each of the parents with "significant periods" of physical custody so as to assure the child of "frequent and continuing contact" with both parents.[10] For example, U.S. states such as Alabama, California, and Texas do not necessarily require joint custody orders to result in substantially equal parenting time, whereas states such as Arizona, Georgia, and Louisiana do require joint custody orders to result in substantially equal parenting time where feasible.[36] Courts have not clearly defined what "significant periods" and "frequent and continuous contact" mean, which requires parents to litigate to find out.

See also

By country or culture

- Child custody laws in the United States
- Child support by country
- Divorce in Judaism
- Divorce of same-sex couples
- Residence in English law
- Shared residency in English law

Other topics

- Breakup
- Coparenting
- Custodial parent
- Divorce
- Family court
- Family law
- Fathers' rights
- Legal custody
- Mothers' rights
- Noncustodial parent
- Parens patriae
- Parental alienation
- Parental alienation syndrome
- Parenting coordinator
- Parenting plan
- Physical custody
- Proxy abuse
- Shared parenting
- Supervised visitation
- Tender years doctrine
- Triangulation (psychology)
- Ward of the state

References

1. "Changes in Custody" (https://cssd.dc.gov/page/changes-custody). *DC.gov - Child Support Services Division*. Washington D.C. Retrieved 3 October 2017.
2. "UNHCR Guidelines on Determining the Best Interests of the Child" (http://www.unhcr.org/4566b16b2.pdf) (PDF). *UNHCR*. United Nations. May 2008. Retrieved 3 October 2017.
3. Detrick, Sharon (1999). *A Commentary on the United Nations Convention on the Rights of the Child* (https://books.google.com/books?id=QB6UB1SCxbsC). Martinus Nijhoff Publishers. p. 176. ISBN 978-9041112293. Retrieved 3 October 2017.
4. Larson, Aaron (11 October 2016). "What is Child Custody" (https://www.expertlaw.com/library/family-law-and-divorce/what-child-custody). *ExpertLaw*. Retrieved 3 October 2017.
5. Dieringer, Jennifer K.; Elsen, Susan R.; Goldenhersh, Stephanie E. (2008). "Child Custody" (https://www.masslegalservices.org/system/files/library/Chapter+09+Final.pdf) (PDF). *Massachusetts Legal Services*. Retrieved 3 October 2017.
6. Jennifer E. Sisk, Child custody laws (http://www.healthofchildren.com/C/Child-Custody-Laws.html), Encyclopedia of Children's Health.
7. Edward Kruk, "Bird's Nest" Co-Parenting Arrangements: When Parents Rotate In and Out of the Family Home (https://www.psychologytoday.com/us/blog/co-parenting-after-divorce/201307/birds-nest-co-parenting-arrangements), Psychology Today, July 16, 2013.
8. Split Custody Definition (http://www.duhaime.org/LegalDictionary/S/SplitCustody.aspx), Duhaime's Law Dictionary

9. Carol, B.S. (1 April 1976). "Who owns the child? Divorce and child custody decisions in middle-class families" (https://academic.oup.com/socpro/article-abstract/23/4/505/1708643). *Social Problems*. **23** (4): 505–515. doi:10.2307/799859 (https://doi.org/10.2307%2F799859). JSTOR 799859 (https://www.jstor.org/stable/799859). Retrieved 3 October 2017.
10. See, e.g., "California Family Code, Sec. 3000-3007" (https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=FAM&division=8.&title=&part=1.&chapter=1.&article=). Retrieved 19 September 2017.
11. See e.g., In re Marriage of Rose and Richardson (App. 2 Dist. 2002) 102 Cal.App.4th 941. Moreover, several courts have also stated, "The term `primary physical custody' has no legal meaning." (In re Marriage of Biallas (1998) 65 Cal.App.4th 755, 759 citing Brody, Whealon, and Ruisi; see also In re Marriage of Richardson, 102 Cal.App.4th 941, 945, fn. 2; In re Marriage of Lasich (2002) 99 Cal.App.4th 702, 714
12. "Basics of Custody & Visitation Orders" (http://www.courts.ca.gov/17975.htm). *California Courts*. State of California. Retrieved 9 May 2017.
13. "Section 30-3-151" (http://www.legislature.state.al.us/CodeofAlabama/1975/30-3-151.htm). Legislature.state.al.us. Retrieved 9 January 2012.
14. "Laws of New York" (http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS). Public.leginfo.state.ny.us. Retrieved 9 January 2012.
15. "Sole custody" (https://www.law.cornell.edu/wex/sole_custody). *Wex*. Cornell Law School. 19 August 2010. Retrieved 3 October 2017.
16. Bjarnason T, Arnarsson AA. Joint Physical Custody and Communication with Parents: A Cross-National Study of Children in 36 Western Countries (http://www.nuigalway.ie/hbsc/documents/2011__ja__bjarnason__joint_custody__jcfm_426.pdf), Journal of Comparative Family Studies, 2011, 42:871-890.
17. Statistics Sweden, Barns boende (växelvis boende, hos mamma, hos pappa, etc.) 2012—2017 (https://www.scb.se/hitta-statistik/statistik-efter-amne/levnadsforhallanden/levnadsforhallanden/undersokningarna-av-levnadsforhallanden-ulf-silc/pong/tabell-och-diagram/boende/barns-boende-vaxelvis-boende-hos-mamma-hos-pappa-etc6.-2012-2017/), November 11, 2018.
18. "Custody Orders Across State-Lines/Overseas" (https://www.americanbar.org/portals/public_resources/aba_home_front/information_center/family_law/children/custody/custody_orders_across_state_lines_overseas.html). *American Bar Association*. Retrieved 21 September 2018.
19. Rush, Sharon E. (1984). "Domestic Relations Law: Federal Jurisdiction a nd State Sovereignty in Perspective" (https://scholarship.law.ufl.edu/cgi/viewcontent.cgi?httpsredir=1&article=1463&context=facultypub). *Notre Dame Law Review*. **60** (1): 438. Retrieved 21 September 2018.
20. Crouch, John (October 1999). "International Child Custody Cases" (https://www.americanbar.org/newsletter/publications/gp_solo_magazine_home/gp_solo_magazine_index/oct99cro.html). *GPSolo*. Retrieved 3 October 2017.
21. Brooks, Barry J. (September 2014). "The Interstate Child: UCCJEA & UIFSA" (http://www.wicsec.org/wp-content/uploads/2014/09/W-31-The-Interstate-Child-Handout-Barry-Brooks-Jeff-Ball-Chris-Sorenson-CLE.pdf) (PDF). *WICSEC*. Western Interstate Child Support Enforcement Council. Retrieved 3 October 2017.
22. Scott, E; Emery, R (January 2014). "Gender Politics and Child Custody: The Puzzling Persistence of the Best-Interests Standard" (http://scholarship.law.duke.edu/lcp/vol77/iss1/4/). *Law and Contemporary Problems*. **77** (1): 69–108. Retrieved 5 May 2016.
23. J., Wallerstein; Lewis, J; Blakeslee, S (2002). "The unexpected legacy of divorce. A 25-year landmark study" (http://www.fellowshipoftheparks.com/Documents%5CUnexpected_Legacy_of_Divorce.pdf) (PDF). *Psychoanalytic Psychology*. Retrieved 5 May 2016.
24. Kruk, Edward (2013). *The Equal Parent Presumption: Social Justice in the Legal Determination of Parenting After Divorce*. Montreal [Quebec]: MQUP. 2013. ISBN 9780773542914.
25. Rasul, Imran (1 February 2006). "*The Economics of Child Custody*" (https://www.ucl.ac.uk/~uctpimr/research/custody_economica.pdf) (PDF). *Economica*. **73** (289): 1–25. CiteSeerX 10.1.1.379.5429 (https://citeseerx.ist.psu.edu/viewdoc/summary?doi=10.1.1.379.5429). doi:10.1111/j.1468-0335.2006.00445.x (https://doi.org/10.1111%2Fj.1468-0335.2006.00445.x). ISSN 1468-0335 (https://www.worldcat.org/issn/1468-0335).
26. Bianchi, Suzanne (November 2010). "Family Change and Time Allocation in American Families" (http://workplaceflexibility.org/images/uploads/program_papers/bianchi_-_family_change_and_time_allocation_in_american_families.pdf) (PDF). *Focus on Workplace Flexibility*.

27. Bureau, US Census. "New Custodial Mothers and Fathers and Their Child Support Report" (https://www.census.gov/newsroom/press-releases/2016/cb16-tps04.html). *www.census.gov*. Retrieved 17 May 2016.
28. Kruk, Edward (2011). "A Model Equal Parental Responsibility Presumption in Contested Child Custody" (http://eds.a.ebscohost.com.ezp.slu.edu/ehost/pdfviewer/pdfviewer?vid=3&sid=3f7f9166-1c2e-4956-8da1-917558eb6257%40sessionmgr4001&hid=4110). *The American Journal of Family Therapy*.
29. Crowley, Joceplyn (Fall 2009). "Taking Custody of Motherhood: Fathers' Rights Activists and the Politics of Parenting". *Women's Studies Quarterly*. **37** (3/4): 223–240. doi:10.1353/wsq.0.0167 (https://doi.org/10.1353%2Fwsq.0.0167). JSTOR 27740591 (https://www.jstor.org/stable/27740591).
30. "If you can't agree on parenting arrangements" (http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/family-law-matters/parenting/if-you-cant-agree-on-arrangements). *Family Court of Australia*. 3 May 2016. Retrieved 3 October 2017.
31. "Introduction to Child Custody: Opposing Viewpoints." *Child Custody*. Ed. Dedria Bryfonski. Detroit: Greenhaven Press, 2011. Opposing Viewpoints. *Opposing Viewpoints in Context*. Web. 5 May 2016.
32. MASON, MARY ANN. "Divorce and Custody." *Encyclopedia of Children and Childhood: In History and Society*. Ed. Paula S. Fass. Vol. 1. New York: Macmillan Reference USA, 2004. 276-279. *Gale Virtual Reference Library*. Web. 5 May 2016.
33. Millar, Paul (2009). *The Best Interests of Children: An Evidence-based Approach*. Toronto: University of Toronto Press, Scholarly Publishing Division.
34. "Tender Years Doctrine." *West's Encyclopedia of American Law*. Ed. Shirelle Phelps and Jeffrey Lehman. 2nd ed. Vol. 9. Detroit: Gale, 2005. 457-458. *Gale Virtual Reference Library*. Web. 5 May 2016.
35. Estrada, R; Marksamer, J (March 2006). "The legal rights of LGBT youth in state custody: what child welfare and juvenile justice professionals need to know" (http://eds.b.ebscohost.com/eds/detail/detail?vid=7&sid=9623c5c5-f162-4e88-a2b2-0acd77fce9f3%40sessionmgr105&hid=112&bdata=JnNpdGU9ZWRzLWxpdmU%3d#AN=106336537&db=rzh). *Child Welfare*. Retrieved 5 May 2016.
36. Minnesota Presumptive Joint Physical Custody Group Report under House File 1262 (2008) Appendix B "State Definitions of Joint Physical Custody"

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